

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 15-00287-CJC(JCGx)

Date: July 22, 2015

Title: MICHAEL PERRI V. RESCUE 1 FINANCIAL, LLC

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Melissa Kunig
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

**PROCEEDINGS: (IN CHAMBERS) ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AND DENYING WITHOUT PREJUDICE
DEFENDANT'S ALTERNATIVE MOTION FOR SUMMARY JUDGMENT** [filed
6/12/15]

Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for July 27, 2015 at 1:30 p.m. is hereby vacated and off calendar.

Defendant Rescue 1 Financial LLC's ("Defendant") motion to dismiss Plaintiff Michael Perri's claim under the Telephone Consumer Protection Act on the ground that Mr. Perri provided prior express consent, (Dkt. No. 24), is **DENIED**. Although Mr. Perri provided his personal information on Defendant's website submission page, he did not give clear written consent to receiving messages using an automatic telephone dialing system or an artificial or prerecorded voice as required under 47 U.S.C. § 227(b)(1)(A). 47 C.F.R. § 64.1200(f)(8) ("The term prior express written consent means an agreement, in writing, bearing the signature of the person called that *clearly* authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages *using an automatic telephone dialing system or an artificial or prerecorded voice. . .*" (emphasis added)).

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Defendant's alternative motion for summary judgment is **DENIED WITHOUT PREJUDICE**. Mr. Perri has not had an adequate opportunity to conduct discovery in order to meaningfully oppose Defendant's motion on the issue of Defendant's use of an automatic telephone dialing system. Defendant may renew its motion after Mr. Perri has had an opportunity to conduct discovery.¹

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CIVIL-GEN

Initials of Deputy Clerk MKU

¹ Accordingly, Mr. Perri's motion requesting that the Court deny or defer Defendant's motion for summary judgment, (Dkt. No. 28), and Defendant's request to strike Mr. Perri's request, (Dkt. No. 34), are **DENIED AS MOOT**.